

**PROJECT NO. 53820**

**REVIEW OF RATES APPLICABLE TO     §     PUBLIC UTILITY COMMISSION  
POLR SERVICE                             §  
   §                             OF TEXAS**

**PROPOSAL FOR PUBLICATION OF AMENDMENTS TO 16 TAC §25.43  
AS APPROVED AT THE SEPTEMBER 15, 2022 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes amendments to 16 Texas Administrative Code (TAC) §25.43 relating to Provider of Last Resort (POLR). This amended rule will update the POLR formulas for residential, and small and medium commercial customer classes to ensure that POLR rates protect POLR customers from excessive rates while ensuring the POLR providers are not overly exposed to risks associated with taking on unexpected customers following a POLR event.

***Growth Impact Statement***

The agency provides the following governmental growth impact statement for the proposed rule, as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rule is in effect, the following statements will apply:

- (1) the proposed rule will not create a government program and will not eliminate a government program;
- (2) implementation of the proposed rule will not require the creation of new employee positions and will not require the elimination of existing employee positions;
- (3) implementation of the proposed rule will not require an increase and will not require a decrease in future legislative appropriations to the agency;

(4) the proposed rule will not require an increase and will not require a decrease in fees paid to the agency;

(5) the proposed rule will not create a new regulation;

(6) the proposed rule will not expand, limit, or repeal an existing regulation;

(7) the proposed rule will not change the number of individuals subject to the rule's applicability; and

(8) the proposed rule will not affect this state's economy.

#### ***Fiscal Impact on Small and Micro-Businesses and Rural Communities***

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rule. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

#### ***Takings Impact Analysis***

The commission has determined that the proposed rule will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

#### ***Fiscal Impact on State and Local Government***

Mariah Benson, Economist, Market Analysis Division, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the state or for units of

local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

### ***Public Benefits***

Ms. Benson has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of the adoption of the proposed amendments will be increased market competition and increased options for customers when the Electric Reliability Council of Texas (ERCOT) real-time settlement point prices rise above the POLR formula. Ms. Benson has also determined that the proposed section will also ensure that the POLR formula will strike a more appropriate balance between costs paid by POLR customers and risks assumed by POLR providers than the existing rule.

### ***Local Employment Impact Statement***

For each year of the first five years the proposed section is in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

### ***Costs to Regulated Persons***

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the commission is expressly excluded under subsection §2001.0045(c)(7).

***Public Hearing***

The commission staff will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by October 6, 2022. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

***Public Comments***

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by October 6, 2022. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rules on adoption. All comments should refer to Project Number 53820.

Each set of comments should include a standalone **executive summary** as the last page of the filing. This executive summary must be clearly labeled with the submitting entity's name and should list each substantive recommendation made in the comments. Citations to detailed discussion in the comments are permissible but not required.

***Statutory Authority***

The amended rule is adopted under PURA §14.002, which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, §39.106, which requires that the commission designate providers of last resort.

Cross Reference to Statute: Public Utility Regulatory Act §14.002 and §39.106.

**§25.43. Provider of Last Resort (POLR).**

(a) - (i) (No change.)

(j) **LSPs.** This subsection governs the selection and service of REPs as LSPs.

(1)-(2) (No change.)

(3) For the purpose of calculating the POLR rate for each customer class in each POLR area, an EFL must be completed by the LSP that has the greatest market share in accordance with paragraph (2) of this subsection. The Electricity Facts Label (EFL) must be supplied to commission staff electronically for placement on the commission webpage by the 10th of each month~~January 1 of each year, and more often if there are changes to the non-bypassable charges.~~ Where REP-specific information is required to be inserted in the EFL, the LSP supplying the EFL must note that such information is REP-specific.

(4) - (5) (No change.)

(k) – (l) (No change.)

(m) **Rates applicable to POLR service.**

(1) (No change.)

(2) Subparagraphs (A)-(C) of this paragraph establish the maximum rate for POLR service charged by an LSP. An LSP may charge a rate less than the maximum rate

if it charges the lower rate to all customers in a mass transition that are in the same class and POLR area.

- (A) **Residential customers.** The LSP rate for the residential customer class must be determined by the following formula:

LSP rate (in \$ per kWh) = (Non-bypassable charges + LSP customer charge + LSP energy charge) / kWh used

Where:

- (i) Non-bypassable charges must be all TDU charges and credits for the appropriate customer class in the applicable service territory and other charges including ERCOT administrative charges, nodal fees or surcharges, reliability unit commitment (RUC) capacity short charges attributable to LSP load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and kW used, where appropriate.
- (ii) LSP customer charge must be ~~\$0.09~~~~\$0.06~~ per kWh.
- (iii) Beginning on the 1st of each month, an LSP energy charge must be the average of the actual Real-Time Settlement Point Prices (RTSPPs) for the applicable load zone for the 30-day period ending on the 20th day of the preceding calendar month~~previous 12-month period ending September 1 of the preceding year~~ (the historical average RTSPP) multiplied by the number of kWhs the customer

used during that billing period and further multiplied by 120%. ~~In no instance may the LSP energy charge exceed 120% of the previous year's LSP energy charge. The LSP energy charge must not exceed 140% of the preceding month's LSP energy charge multiplied by the cap adjustment factor. The value of the cap adjustment factor is set to 1.0 every calendar year. At any time commission staff can file a recommendation for the commission to set a different cap adjustment factor. A LSP offering POLR service must declare the cap adjustment factor on the EFL.~~ The applicable load zone will be the load zone located partially or wholly in the customer's TDU service territory with the highest average under the historical average RTSPP calculation.

- (iv) "Number of kWhs the customer used" is based on usage data provided to the POLR by the TDU.

- (B) **Small and medium non-residential customers.** The LSP rate for the small and medium non-residential customer classes must be determined by the following formula:

$$\text{LSP rate (in \$ per kWh)} = (\text{Non-bypassable charges} + \text{LSP customer charge} + \text{LSP demand charge} + \text{LSP energy charge}) / \text{kWh used}$$



Where:

- (i) Non-bypassable charges must be all TDU charges and credits for the appropriate customer class in the applicable service territory, and other charges including ERCOT administrative charges, nodal fees or surcharges, RUC capacity short charges attributable to LSP load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and kW used, where appropriate.
- (ii) LSP customer charge must be \$0.025 per kWh.
- (iii) LSP demand charge must be \$2.00 per kW, per month, for customers that have a demand meter, and \$50.00 per month for customers that do not have a demand meter.
- (iv) Beginning on the 1st of each month, LSP energy charge must be the average of the actual RTSPPs for the applicable load zone for the 30-day period ending on the 20th day of the preceding calendar month previous 12-month period ending September 1 of the preceding year multiplied by the number of kWhs the customer used during that billing period and further multiplied by 125%. ~~In no instance may the~~ The LSP energy charge must not exceed ~~140%~~125% of the preceding month's previous year's LSP energy charge multiplied by the cap adjustment factor. The value of the cap adjustment factor is set to 1.0 every calendar year. At any time commission staff can file a recommendation for the commission to set a different cap adjustment factor. A LSP offering POLR service

must declare the cap adjustment factor on the EFL. The applicable load zone will be the load zone located partially or wholly in the customer's TDU service territory with the highest average under the historical average RTSPP calculation.

- (v) "Number of kWhs the customer used" is based on usage data provided to the POLR by the TDU.

- (C) **Large non-residential customers.** The LSP rate for the large non-residential customer class must be determined by the following formula:

$$\text{LSP rate (in \$ per kWh)} = (\text{Non-bypassable charges} + \text{LSP customer charge} + \text{LSP demand charge} + \text{LSP energy charge}) / \text{kWh used}$$

Where:

- (i) Non-bypassable charges must be all TDU charges and credits for the appropriate customer class in the applicable service territory, and other charges including ERCOT administrative charges, nodal fees or surcharges, RUC capacity short charges attributable to LSP load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and KW used, where appropriate.
- (ii) LSP customer charge must be \$2,897.00 per month.
- (iii) LSP demand charge must be \$6.00 per kW, per month.
- (iv) LSP energy charge must be the appropriate RTSPP, determined on the basis of 15-minute intervals, for the customer multiplied by

125%, multiplied by the level of kilowatt-hours used. The energy charge must have a floor of \$7.25 per MWh.

- (3) If in response to a complaint or upon its own investigation, the commission determines that an LSP failed to charge the appropriate rate prescribed by paragraph (2) of this subsection, and as a result overcharged its customers, the LSP must issue refunds to the specific customers who were overcharged.
- (4) On a showing of good cause by an affected person, the commission may direct an ~~permit the~~ LSP to adjust the rate prescribed by paragraph (2) of this subsection, if necessary to ensure that the rate is sufficient to allow an~~the~~ LSP to recover its costs of providing service. Notwithstanding any other commission rule to the contrary, such rates may be adjusted on an interim basis for good cause shown and after at least 10 business days' notice and an opportunity for hearing on the request for interim relief. Any adjusted rate must be applicable to all LSPs charging the rate prescribed by paragraph (2) of this subsection to the specific customer class, within the POLR area that is subject to the adjustment.
- (5) (No change.)

(n) - (w) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 15TH DAY OF SEPTEMBER 2022 BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
ADRIANA GONZALES**